

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO EX REL. THE	:	APPEAL NO. C-090155
CINCINNATI ENQUIRER, A		
DIVISION OF GANNETT SATELLITE	:	JUDGMENT ENTRY.
INFORMATION NETWORK, INC.,		
	:	
Relator,		
	:	
vs.		
	:	
MARY RONAN, SUPERINTENDENT,		
	:	
Respondent.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

This case comes before us on remand from the Ohio Supreme Court.² The only issue remaining is the demand of the relator, the Cincinnati Enquirer, for attorney fees. The request is denied.

On February 5, 2009, a reporter for the Enquirer hand-delivered a written request for documents submitted to the Cincinnati Public Schools (“CPS”) by prospective candidates for the then-vacant superintendent position. The school district refused the Enquirer’s request because it had not yet checked the post office box to which the documents were directed, and because it would not do so until March 16. The school district promised to make all public records in the post office box available for inspection after that date.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² *State ex rel. Cincinnati Enquirer v. Ronan*, 124 Ohio St.3d 17, 2009-Ohio-5947, 918 N.E.2d 515.

On March 5, the Enquirer filed this action in mandamus seeking to compel CPS to comply with the February 5 request. On March 16, CPS employees opened the post office box and retrieved the application materials that had been submitted. The next day, copies were provided to the Enquirer. This court then dismissed the action as moot. On appeal, the Ohio Supreme Court agreed with the mootness determination but concluded that the issue of attorney fees remained. “[E]ven if the Enquirer’s mandamus claim were properly dismissed as moot, a claim for attorney fees in a public-records mandamus action is not rendered moot by the provision of the requested records after the case has been filed.”³

The award of attorney fees under R.C. 149.43(C) is discretionary.⁴ “A court may award attorney fees pursuant to R.C. 149.43 where (1) a person makes a proper request for public records pursuant to R.C. 149.43, (2) the custodian of the public records fails to comply with the person’s request, (3) the requesting person files a mandamus action pursuant to R.C. 149.43 to obtain copies of the records, and (4) the person receives the requested public records only after the mandamus action is filed, thereby rendering the claim for a writ of mandamus moot.”⁵ But the court should also consider “the presence of a public benefit conferred by relator seeking the disclosure,”⁶ as well as the reasonableness and good faith of the respondent in refusing to make disclosure.⁷

³ Id. at ¶10, quoting *State ex rel. Cincinnati Enquirer v. Heath*, 121 Ohio St.3d 165, 2009-Ohio-590, 902 N.E.2d 976, at ¶18.

⁴ *State ex rel. WBNS TV, Inc. v. Dues*, 101 Ohio St.3d 406, 2004-Ohio-1497, 805 N.E.2d 1116, at ¶47, quoting *State ex rel. Fox v. Cuyahoga Cty. Hosp. Sys.* (1988), 39 Ohio St.3d 108, 529 N.E.2d 443, paragraph two of the syllabus.

⁵ *State ex rel. Ohio Patrolmen’s Benevolent Assn. v. Mentor*, 89 Ohio St.3d 440, 449, 2000-Ohio-214, 732 N.E.2d 969, quoting *State ex rel. Pennington v. Gundler* (1996), 75 Ohio St.3d 171, 1996-Ohio-161, 661 N.E.2d 1049, syllabus.

⁶ *State ex rel. Multimedia, Inc. v. Whalen* (1990), 51 Ohio St.3d 99, 100, 554 N.E.2d 1321; *State ex rel. Dillery v. Icsman* (2001), 92 Ohio St.3d 312, 316, 2001-Ohio-193, 750 N.E.2d 156.

⁷ Id.

We conclude that CPS properly complied with the records request. We agree with Justice Lundberg Stratton's determination that "[t]he district was not obligated to produce copies of the documents until it had used them to carry out the school district's duties and responsibilities, at which point they became public records subject to inspection."⁸ Here, the records were provided to the Enquirer within one day after CPS had retrieved them from the post office box. Even if we had concluded otherwise, any failure to comply was reasonable under the circumstances of this case. Any delay that resulted from the procedure employed by CPS was so insignificant that the impact of this litigation was de minimis.

The Enquirer's request for attorney fees is denied, and this case is dismissed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 27, 2010

per order of the Court _____.
Presiding Judge

⁸ See *Ronan*, supra, at ¶16 (Lundberg Stratton, J., concurring in part and dissenting in part), citing *State ex rel. Beacon Journal Publishing Co. v. Whitmore*, 83 Ohio St.3d 61, 63, 1998-Ohio-180, 697 N.E.2d 640.